

VENABLE, BAETJER, HOWARD & CIVILETTI  
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD  
McLEAN, VA  
ROCKVILLE, MD  
TOWSON, MD  
BEL AIR, MD

SUITE 1000  
1201 NEW YORK AVENUE, N. W.  
WASHINGTON, D. C. 20005-3917

(202) 962-4800

FAX (202) 962-8333

TELEX 898032 VENABLE BHBWSH

RICHARD M. VENABLE (1839-1910)  
EDWIN G. BAETJER (1868-1945)  
CHARLES MCH. HOWARD (1870-1942)

ORIGINAL  
FILE

WRITER'S DIRECT NUMBER IS

202/962-4811

November 19, 1990

BY HAND DELIVERY

The Honorable Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street N.W., Room 222  
Washington, D.C. 20554

Rm 7462  
NIM 92-157  
RECEIVED

NOV 19 1990

Federal Communications Commission  
Office of the Secretary

RE: Petition for Reconsideration

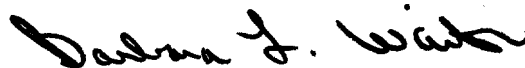
Dear Ms. Searcy:

Please find attached a Petition for Reconsideration submitted this date on behalf of Robert G. Johnston, Trustee, licensee of WQAZ(FM), Cleveland, Mississippi, and of his proposed successor in interest, Larry G. Fuss. As of this date, a file number was not yet available to identify the pending application for assignment of license under which Mr. Fuss is the proposed successor in interest to Mr. Johnston, but the Petition will be supplemented with this information.

The Petition will be similarly supplemented with the original of Mr. Fuss' signed Declaration, included as Exhibit C. As Mr. Fuss is presently temporarily outside of the continental United States, a facsimile is provided at this time, with the original to be provided upon his return.

If there are any questions, please contact the undersigned.

Very truly yours,



Barbara L. (Pixie) Waite

BLW/arp

Attachment

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILE  
RECEIVED

NOV 19 1990

Federal Communications Commission  
Office of the Secretary

In re )  
)  
)

Petition for Rule Making )  
to Amend Section 73.202(b) )  
Table of Allotments, )  
FM Broadcastion Stations )  
(Cleveland and Belzoni, )  
Mississippi) )  
)  
)  
)

MM Docket No. 92-157

RM No. 7462

TO: Douglas W. Webbink, Chief  
Policy and Rules Division  
and  
Larry D. Eads, Chief  
Audio Services Division

**PETITION FOR RECONSIDERATION**

Robert G. Johnston, Trustee ("Johnston"), licensee of WQAZ(FM), Cleveland, Mississippi, by counsel, pursuant to Section 1.106 of the Commission's Rules, hereby petitions for reconsideration of the Staff action of October 18, 1990, returning the above-referenced Petition for Rulemaking as defective. In support whereof, Johnston respectfully states as follows.

On June 11, 1990, Johnston filed a Petition for Rulemaking with the Commission to amend Section 73.202(b) of the Commission's Rules by substituting Channel 225C2 for Channel 254A at Cleveland, Mississippi, and the modification of the license of WQAZ(FM), to specify operation on the higher-class channel. To accommodate the Cleveland channel

substitution, Johnston proposed the concomitant substitution of Channel 292A for vacant but applied-for Channel 225A at Belzoni, Mississippi. A copy of this Petition for Rulemaking is attached as Exhibit A to this Petition for Reconsideration.

By letter dated October 18, 1990, this Petition for Rulemaking was returned as defective on the basis that the proposed substitution of Channel 292A at Belzoni was short-spaced to the licensed sites of KNAN(FM), Channel 291C, Monroe, Louisiana, and with WAID(FM), Channel 292A, Clarksdale, Mississippi. The conclusion that the proposed substitution would be short-spaced was based upon the site coordinates proposed in the application for construction permit for Channel 225A, Belzoni, pending at the time the Petition for Rulemaking was filed, which application was subsequently granted on July 18, 1990. A copy of this letter is attached hereto as Exhibit B.

Johnston seeks reconsideration on the basis of the Staff's errors in two respects. First, Johnston's Petition was not defective as filed. It has long been the Commission's rule that petitioners for amendments to the table of allotments need not protect sites proposed by applicants. Memorandum Opinion and Order (Implementation of BC Docket No. 80-90, on remand), 5 F.C.C. Rcd. 916, 916 and n.3, 67 R.R.2d 603, 603 and n.3 (1990). Therefore, Johnston's Petition was properly based upon the

Commission's reference coordinates for Belzoni, Mississippi, to which there was no short-spacing.

Second, the Staff erred in granting a pending application for construction permit on a channel subject to a pending Petition for Rulemaking to substitute channels. In accordance with the above-referenced Commission policy, the application should have been held in abeyance pending the outcome of the Petition for Rulemaking or, at least, conditioned on such outcome. The unconditional grant of this application on July 18, 1990, was the subject of a timely informal objection by Johnston's engineering consultant<sup>1/</sup> on July 31, 1990, receipt of which was acknowledged by the Staff.<sup>2/</sup> Prior to receiving the letter of October 18, 1990, from the Policy and Rules Division, Johnston had relied upon the representation of Staff in the FM Branch to his engineering consultant that the matter "was being looked into".

Therefore, Johnston submits that this Petition, submitted within 30 days of the date of the Staff's action

---

<sup>1/</sup> Johnston's, engineering consultant, Larry G. Fuss, d/b/a Contemporary Communications, subsequently entered into an agreement to acquire the facility at issue, in combination with a sister-AM facility. The applications for assignment of license are currently pending before the Commission under FCC File Nos. BAL-901102EE (AM) and BALH-\_\_\_\_\_ (FM).

<sup>2/</sup> Fuss believed that an error had simply been made, perhaps on the basis of a delay in entering the Petition for Rulemaking's into the Commission's database and that, if such an error were brought to the Staff's attention in the FM Branch, it would be corrected. See Exhibit C attached hereto.

returning the Petition for Rulemaking as defective, is timely filed with respect to both actions of the Staff. First, the erroneous interim grant of the pending application for a construction permit on Channel 225A at Belzoni, Mississippi, was the basis for the return of Johnston's Petition for Rulemaking. Johnston is entitled to request reconsideration of the Staff's reasons for rejecting his Petition for Rulemaking.

Second, even if the timely-filed informal objection to the grant of the Belzoni construction permit application were considered insufficient as a Petition for Reconsideration with respect to that action,<sup>3/</sup> the Commission has held that it has the authority to consider a late-filed Petition if it is late-filed as a result of reliance upon actions of the Staff. Richardson Independent School District, 5 F.C.C. Rcd. 3135, 67 R.R.2d 1412 (1990). Johnston took no further action with respect to the grant of the Belzoni application because he relied upon the assurances of the staff that the matter was being addressed.

Johnston hereby respectfully requests that his Petition for Rulemaking be reinstated as having been erroneously rejected, and that the grant of the Belzoni be, in the

---


<sup>3/</sup> There is precedent for the Commission's treating an informal objection as a Petition for Reconsideration. See, e.g., Triangle Publications, Inc., 27 F.C.C.2d 1019, 21 R.R.2d 420 (1971).

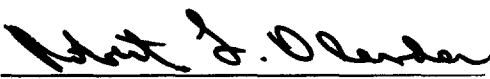
alternative, rescinded and stayed, pending the outcome of the reinstated Petition for Rulemaking, or modified to condition the grant upon the outcome of the reinstated Petition for Rulemaking. Johnston submits that such action would not prejudice the Belzoni applicant<sup>4/</sup> and that the failure to take such action would prejudice the ability of his Cleveland facility to upgrade in class. Such an upgrade is in the public interest, as it would provide Cleveland and Bolivar County, Mississippi, with its first wide-coverage FM station.

Respectfully submitted,

LARRY C. FUSS, Proposed  
Successor In Interest

ROBERT G. JOHNSTON, Trustee

By:   
Barbara L. Waite  
Venable, Baetjer, Howard  
& Civiletti  
1201 New York Ave. N.W.  
Suite 1000  
Washington, DC 20005  
(202) 962-4811

By:   
Robert L. Olender  
Baraff, Koerner, Olerder  
& Hochberg, P.C.  
2033 M Street, N.W.  
Suite 700  
Washington, D.C. 20036  
(202) 452-8200

His Counsel

His Counsel

November 19, 1990

---

<sup>4/</sup> Johnston's engineering consultant, Fuss, has discussed the matter with the Belzoni applicant in an effort to resolve this matter without need for these proceedings. Fuss was told that the site specified by the applicant was merely a "proposed" site and that he was now in the process of seeking a new site. Therefore, no construction has commenced. See Exhibit C attached hereto.

**CERTIFICATE OF SERVICE**

I, Angela R. Pomery, a secretary in the offices of Venable, Baetjer, Howard & Civiletti, hereby certify that a copy of the foregoing "Petition for Reconsideration" was served via first-class, U.S. Mail, upon the following this 19th day of November, 1990.

\*Douglas W. Wibbink, Chief  
Policy and Rules Division  
Mass Media Bureau  
2025 M Street, N.W., Room 8010  
Washington, D.C. 20554

\*Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau  
1919 M Street, N.W., Room 302  
Washington, D.C. 20554

Larry R. Scott  
1605 Carlisle Dr. E.  
Mobile, AL 36618

A handwritten signature in cursive script, reading "Angela R. Pomery", is written over a horizontal line.

\*Served by hand-delivery.

**EXHIBIT A**



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket _____
Table of Allotments,	)	RM - _____
FM Broadcast Stations	)	
(Cleveland and Belzoni,	)	
Mississippi)	)	

To: The Chief, Allocations Branch

**PETITION FOR RULE MAKING**

Comes now Robert G. Johnston, Trustee (hereafter "Johnston"), licensee of Station WQAZ(FM) at Cleveland, Mississippi, pursuant to Section 1.401 of the Commission's Rules, and respectfully petitions the Commission to amend the FM Table of Allotments, 47 C.F.R. 73.202(b), to substitute FM Channel 225C2 for Channel 224A at Cleveland, Mississippi, and the modification of the license of Station WQAZ(FM) to specify operation on the higher-class channel. To accommodate the Cleveland channel substitution, Johnston proposes the concomitant substitution of Channel 292A for vacant Channel 225A at Belzoni, Mississippi.

Proposal of Petitioner:

---

<u>City</u>	<u>Channel Numbers</u>	
	<u>Present</u>	<u>Proposed</u>
Cleveland, Mississippi	224A, 280A, 295A	225C2, 280A, 295A
Belzoni, Mississippi	225A, 296A	292A, 296A

---

In support of this proposal, the following information is submitted for consideration:

Cleveland (population 14,524) <sup>1/</sup> is an incorporated city located in northwest Mississippi, approximately 168 kilometers (104 miles) north-northwest of Jackson. It is one of two county seats of Bolivar County, Mississippi (population 45,965). Adoption of this proposal will provide Cleveland and Bolivar County with its first wide-coverage FM station.

Attached hereto and made a part of this petition is a Technical Exhibit in support of the requested changes in the Table of Allotments. Based on the information contained therein, it appears that Channel 225C2 could be

---

<sup>1/</sup> Population figures from the 1980 U.S. Census.

substituted for Channel 224A in compliance with the minimum distance requirements of Section 73.207(b) of the Commission's Rules, providing Channel 292A is substituted for Channel 225A 2/ at Belzoni, Mississippi. Channel 292A at Belzoni, Mississippi would be made available upon final adoption of Mass Media Docket No. 89-373 (RM-6873), in which Station WLTD(FM) at Lexington, Mississippi has proposed to move from Channel 292A to Channel 290C3 (this docket is uncontested and a Report and Order should be adopted in the near future).

By changing the FM Table of Allotments as requested herein, a more efficient use of the available spectrum would result, providing increased FM service to the rural area surrounding Cleveland, Mississippi.

If this proposal is adopted, Robert G. Johnston, Trustee, will file an application seeking Class C2 facilities for WQAZ(FM).

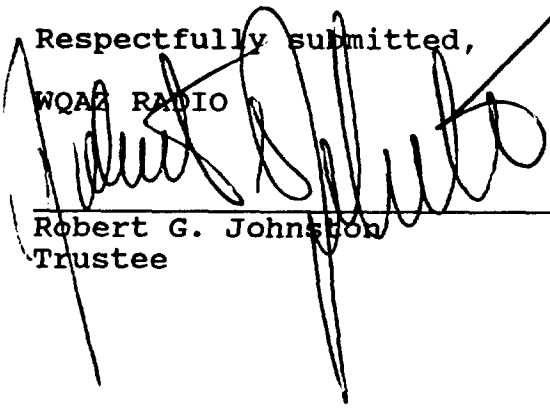
---

2/ Channel 225A was allocated to Belzoni in MM Docket No. 84-231. There is one pending application for the channel. In accordance with Commission policy, should the changes proposed herein be effectuated, the applicant for Channel 225A at Belzoni, Larry Rogers Scott, would be permitted to amend his application (File No. 870327KD) to specify a non-short-spaced site. See *Manhattan and Ogden, Kansas*, 2 FCC Rcd. 5081 (1987).

WHEREFORE, it is respectfully requested that the instant petition be granted and that the FM Table of Allotments, Section 73.202(b), be amended as requested herein.


Respectfully submitted,

WQAZ RADIO

  
Robert G. Johnston  
Trustee

By:

CONTEMPORARY COMMUNICATIONS

  
Larry G. Fuss, Consultant  
P.O. Box 159  
Fayetteville, GA 30214  
(404) 460-6159

June 6, 1990

# **TECHNICAL EXHIBIT**

**IN SUPPORT OF  
PETITION FOR RULE MAKING**

**SUBSTITUTION OF:**

**FM CH. 225C2 FOR FM CH. 224A AT CLEVELAND, MISSISSIPPI**

**FM CH. 292A FOR FM CH. 225A AT BELZONI, MISSISSIPPI**

**AND MODIFICATION OF LICENSE  
OF WQAZ(FM) CLEVELAND, MISSISSIPPI  
TO SPECIFY OPERATION ON THE HIGHER-CLASS CHANNEL**

**ROBERT G. JOHNSTON, TRUSTEE**

**Prepared May 30, 1990**

**CONTEMPORARY COMMUNICATIONS  
Broadcast Consultants  
Post Office Box 159  
Fayetteville, GA 30214  
Phone: (404) 460-6159  
Fax: (404) 460-6129**

# TECHNICAL EXHIBIT

IN SUPPORT OF  
PETITION FOR RULE MAKING

SUBSTITUTION OF:

FM CH. 225C2 FOR FM CH. 224A AT CLEVELAND MISSISSIPPI  
FM CH. 292A FOR FM CH. 225A AT BELZONI, MISSISSIPPI

AND MODIFICATION OF LICENSE  
OF WQAZ(FM) CLEVELAND, MISSISSIPPI  
TO SPECIFY OPERATION ON THE HIGHER-CLASS CHANNEL

ROBERT G. JOHNSTON, TRUSTEE

## INTRODUCTION

This Technical Exhibit supports the petition of Robert G. Johnston, Trustee, seeking to amend the FM Table of Allotments, Section 73.202(b) of the Rules, by substituting FM Channel 225C2 for FM Channel 224A at Cleveland, Mississippi, and the modification of Station WQAZ(FM)'s license to specify operation on the higher-class channel. To accommodate the Cleveland channel substitution, Johnston proposes a concomitant change in the FM Table of Allotments at Belzoni, Mississippi, by substituting Channel 292A for vacant channel 225A.

## ALLOCATION

A study was performed using the computerized SEARCHFM frequency search program and the current FCC/NTIS database to determine if Channel 225C2 could be allocated to Cleveland in

compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. The results of that study clearly indicate that Channel 225C2 could be substituted for Channel 224A, in full compliance with Section 73.207(b), at WQAZ(FM)'s presently authorized transmitter site 1/. Furthermore, Channel 292A could be substituted for Channel 225A 2/ at Belzoni, Mississippi, in full compliance with Section 73.207(b), proving a site restriction approximately 8 kilometers (5 miles) southeast of Belzoni were imposed 3/. The site-restriction would be necessary in order to avoid short-spacing to Station WAID(FM), Channel 292A at Clarksdale, Mississippi; and to Station KNAN(FM), Channel 291C at Monroe, Louisiana. Channel 292A at Belzoni,

---

1/ The "usable area" for Channel 225C2 is shown on the attached map, which indicates the required separation limits from the affected co-channel and adjacent channel allocations and stations, and the maximum distance within which a Class C2 facility may be located while still providing the requisite 70 dBu contour over the city of Cleveland.

2/ Channel 225A was allocated to Belzoni in MM Docket No. 84-231. There is one pending application for the channel. In accordance with Commission policy, should the changes proposed herein be effectuated, the applicant for Channel 225A at Belzoni, Larry Rogers Scott, would be permitted to amend his application (File No. 870327KD) to specify a non-short-spaced site. See *Manhattan and Ogden, Kansas*, 2 FCC Rcd. 5081 (1987).

3/ The "usable area" for Channel 292A is shown on the attached map, which indicates the required separation limits from the affected co-channel and adjacent channel allocations and stations, and the maximum distance within which a Class A facility may be located while still providing the requisite 70 dBu contour over the city of Belzoni.

Mississippi would be made available upon final adoption of Mass Media Docket No. 89-373 (RM-6873), in which Station WLTD(FM) at Lexington, Mississippi has proposed to move from Channel 292A to Channel 290C3 (this docket is uncontested and a Report and Order should be adopted in the near future).

A site at the reference coordinates specified in the search would be close enough to Belzoni to insure adequate city-grade (70 dBu) coverage to the entire city, in full compliance with Section 73.315(a) and (b).

### CONCLUSION

By changing the FM Table of Allotments as requested herein, a more efficient use of the available spectrum would result. Station WQAZ(FM) would be permitted to upgrade to a Class C2 facility and a Class A allotment at Belzoni would be retained.

Copies of the computerized studies for Channel 225C2 at Cleveland, Mississippi, and Channel 292A at Belzoni, Mississippi, are attached hereto and made a part of this report (only those stations and channels sufficiently close for concern are listed therein).

###



CONTEMPORARY COMMUNICATIONS  
P.O. Box 159 - Fayetteville GA

WQAZ(FM) - CLEVELAND, MS  
C2 UPGRADE STUDY

REFERENCE	CLASS C2	DISPLAY DATES
33 45 12 N		DATA 04-25-90
90 42 45 W	Current rules spacings	SEARCH 05-27-90
----- CHANNEL 225 - 92.9 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WQAZ	224A	Cleveland	MS	0.0	0.00	106.0	-106.00 *
LI CN	33 45 12	90 42 45	3.000 kW	80M	0.0	65.9	
		WQAZ Limited			BLH860331KC		
AL225	225A	Belzoni	MS	161.7	66.79	166.0	-99.21 *
AL N	33 10 54	90 29 12	0.000 kW	0M	41.5	103.2	
		84-231					860102
		># 4					
KLPLFM	224A	Lake Providence	LA	204.0	113.68	106.0	7.68
LI CN	32 49 02	91 12 35	2.000 kW	44M	70.7	65.9	
		New Directions Broadcasting,			BLH6445		
AP225	225A	Bartlett	TN	24.6	176.49	166.0	10.49
AP CN	35 12 01	89 54 49	3.000 kW	100M	109.7	103.2	
		Richard P. Bott			BPH871224ME		881007
AP225	225A	Bartlett	TN	24.2	176.72	166.0	10.72
AP CN	35 12 24	89 55 28	3.000 kW	100M	109.8	103.2	
		Raymond J. and Jean-Marie Str			BPH871223MQ		881007
AP225	225A	Bartlett	TN	24.5	176.93	166.0	10.93
AP CN	35 12 17	89 54 50	3.000 kW	100M	110.0	103.2	
		Bartlett Media			BPH871224MC		881007
		>AMENDED 880224					
KLPLFM	224A	Lake Providence	LA	204.2	117.70	106.0	11.70
CP CN	32 47 06	91 13 46	3.000 kW	100M	73.2	65.9	
		New Directions Broadcasting,			BPH861210IF		
AP225	225A	Bartlett	TN	22.7	178.37	166.0	12.37
AP CN	35 14 11	89 57 43	3.000 kW	100M	110.9	103.2	
		Belz Broadcasting Co.			BPH871224MI		881007
AL225	225A	Utica	MS	174.2	179.72	166.0	13.72
AL N	32 08 28	90 31 06	0.000 kW	0M	111.7	103.2	
		86-430					880701
AL225	225A	Bartlett	TN	25.5	181.59	166.0	15.59
AL N	35 13 53	89 51 46	0.000 kW	0M	112.9	103.2	

CONTEMPORARY COMMUNICATIONS  
P.O. Box 159 - Fayetteville GA

CLASS C2

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
87-72							871224
>EFFECTIVE 871123-SITE RESTRICTED							
WJXNFM	225A	Utica	MS	173.8	184.16	166.0	18.16
AP CN	32 06 09	90 29 56	0.900 KW	175M	114.5	103.2	
St. Pe' Broadcasting, Inc.					BMPH891117IC		
WJXNFM	225A	Utica	MS	173.8	184.16	166.0	18.16
CP CN	32 06 09	90 29 56	3.000 KW	100M	114.5	103.2	
St. Pe' Broadcasting, Inc.					BPH880621MB 881209		
KHBMFM	228A	Monticello	AR	260.6	101.01	55.0	46.01
LI CN	33 36 18	91 47 14	2.350 KW	104M	62.8	34.2	
Midway Broadcasting Company					BLH791123AC		

CITY GRADE LIMIT

AL225--LIMIT

AP225 LIMIT

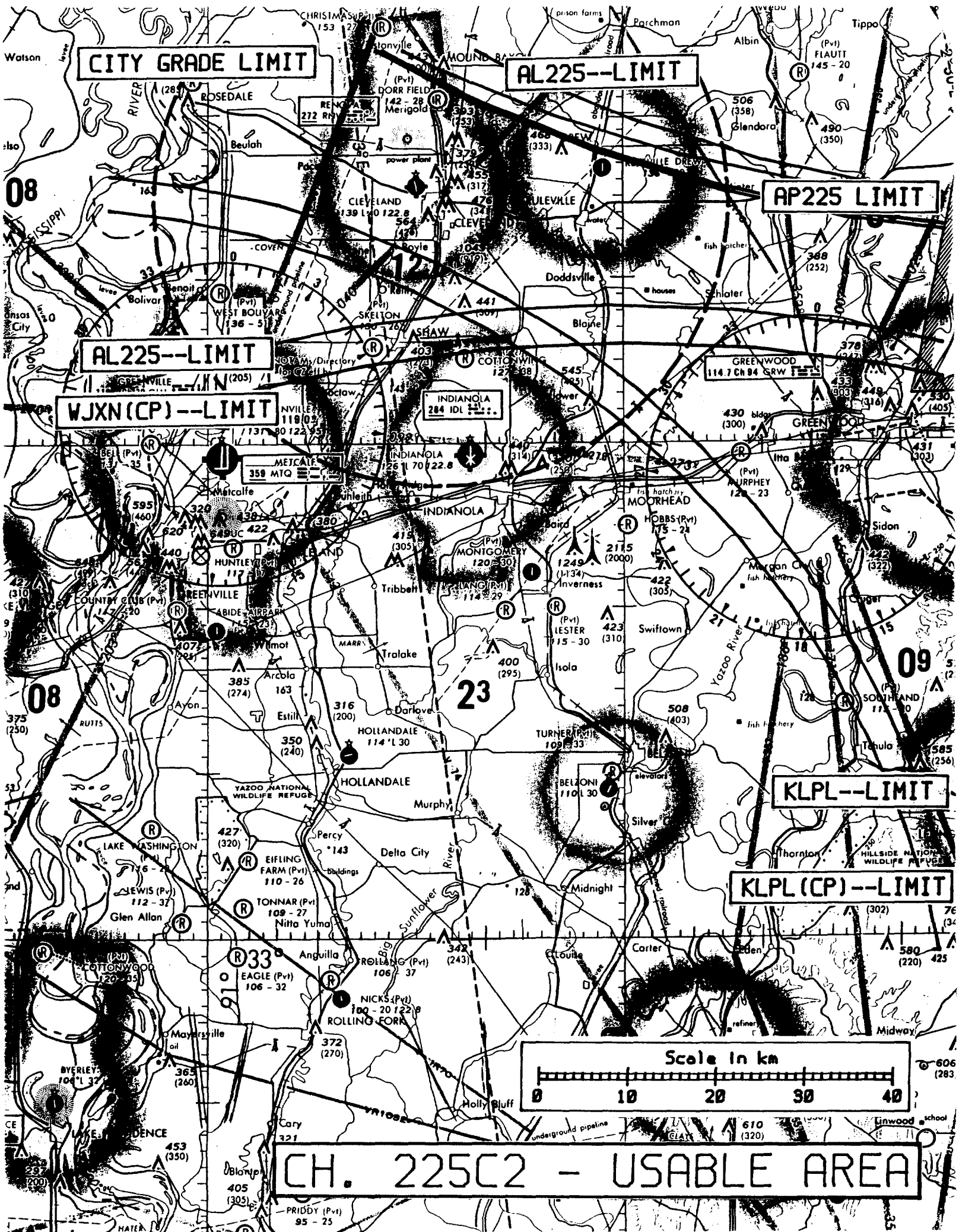
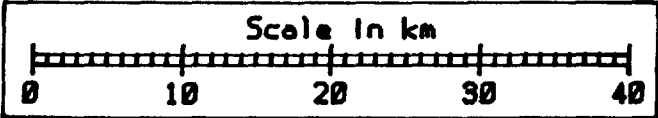
AL225--LIMIT

WJXN(CP)--LIMIT

KLPL--LIMIT

KLPL(CP)--LIMIT

CH. 225C2 - USABLE AREA

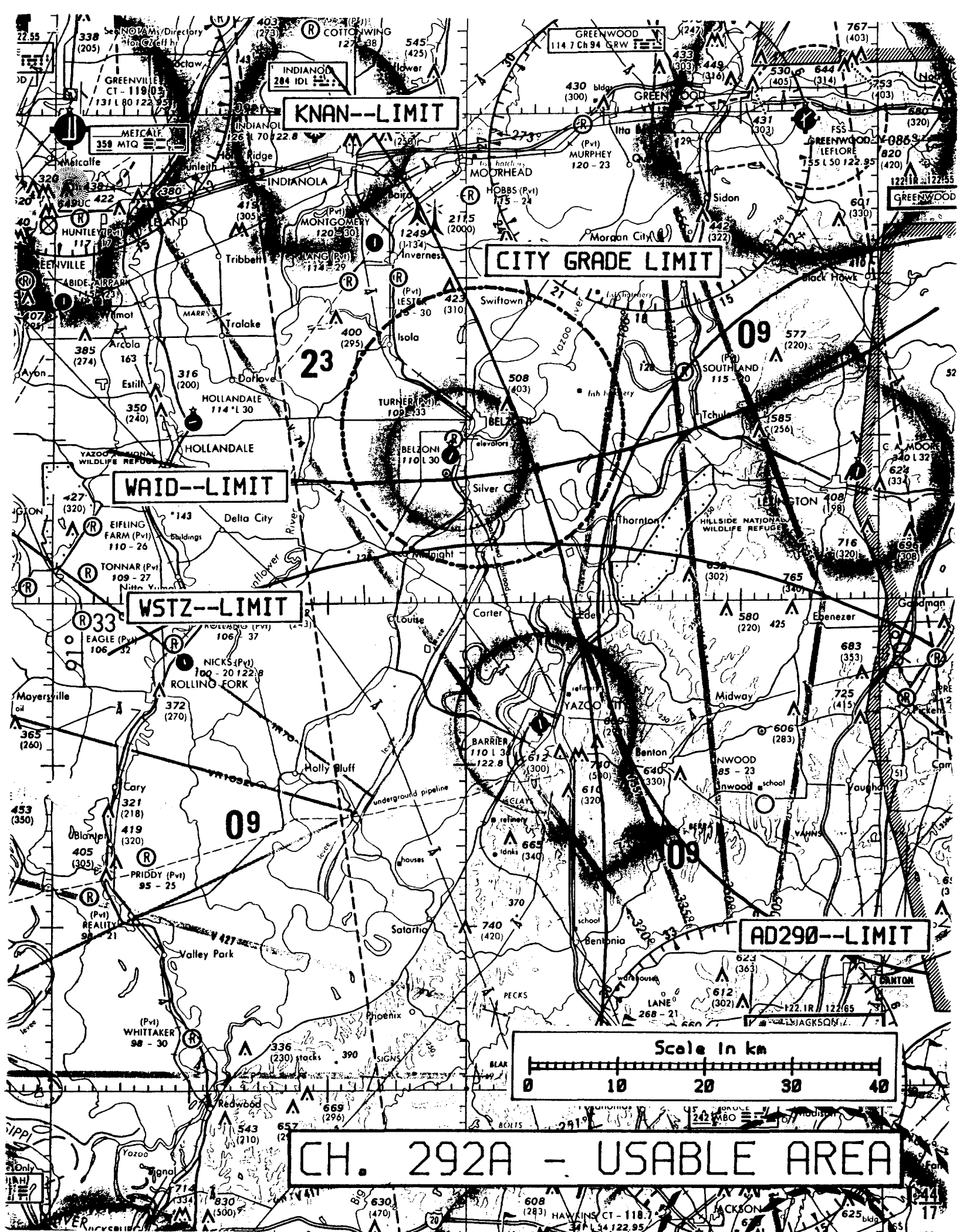


CONTEMPORARY COMMUNICATIONS  
P.O. Box 159 -- Fayetteville GA

BELZONI, MISSISSIPPI  
ALTERNATE CHANNEL STUDY

REFERENCE		CLASS A	DISPLAY DATES
33 08 06 N		Current rules spacings	DATA 04-25-90
90 24 58 W		CHANNEL 292 -106.3 MHz	SEARCH 05-27-90

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
DE292 DE	292A 33 06 14	Lexington 90 00 14	MS 0.000 kW	95.1 0M	38.63 24.0	115.0 71.5	-76.37 *
		J. Scott Communication, Inc.			RM6873		
WLTD LI CN	292A 33 06 14	Lexington 90 00 10	MS 3.000 kW	95.1 91M	38.73 24.1	115.0 71.5	-76.27 *
		J. Scott Communications, Inc.			BLH800814AE		
WAID LI CN	292A 34 09 22	Clarksdale 90 37 52	MS 3.000 kW	350.0 91M	115.00 71.5	115.0 71.5	0.00 *
		Radio Cleveland Inc.			BLH7840		
DE292 DE	292A 34 09 22	Clarksdale 90 37 52	MS 0.000 kW	350.0 0M	115.00 71.5	115.0 71.5	0.00 *
		Dunn Broadcasting Corporation			RM7165		
KNAN LI CY	291C 32 39 36	Monroe 92 05 15	LA 100.000 kW	251.4 310M	165.01 102.6	165.0 102.6	0.01 *
		Live Oak Broadcasting Company			BLH880714IA		
WSTZFM LI CN	294C 32 12 22	Vicksburg 90 24 50	MS 100.000 kW	179.9 324M	103.01 64.0	95.0 59.0	8.01
		Lewis Broadcasting Corporatio			BLH850717KH		
AD290 AD	290C3 33 00 00	Lexington 89 53 30	MS 0.000 kW	107.0 0M	51.21 31.8	42.0 26.1	9.21
		J. Scott Communication, Inc.			RM6873		
WMYQFM CP CN	292A 32 19 53	Newton 89 10 48	MS 3.000 kW	127.6 48M	146.18 90.8	115.0 71.5	31.18
		Newton Broadcasting Company,			BPH860127IA		
WMYQFM LI CN	292A 32 19 46	Newton 89 10 08	MS 3.000 kW	127.4 49M	147.13 91.4	115.0 71.5	32.13
		Newton Broadcasting Company,			BLH6659		



## CERTIFICATION

State of Georgia     )  
                              )   ss.  
County of Fayette    )

I, Larry G. Fuss, do hereby certify as follows:

- 1) I am a qualified and experienced broadcast consultant. I have been actively involved in the broadcast industry since 1972 and currently hold a lifetime FCC General Class Radio Telephone License (License No. PG-8-8450).
- 2) I have prepared numerous applications and rule making petitions which have been accepted for filing with the Federal Communications Commission.
- 3) I have been retained by WQAZ Radio to prepare the attached Technical Exhibit.
- 4) The Technical Exhibit, of which this deposition is a part, and the measurements, calculations, studies and determinations upon which this report is based, were prepared by me or under my direction. All material contained therein is believed to be true and correct, to the best of my knowledge and belief.

Larry G. Fuss  
Larry G. Fuss  
Affiant

May 30, 1990  
Date

**EXHIBIT B**

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

OCT 18 1990

IN REPLY REFER TO:

Mr. Larry G. Fuss  
Contemporary Communications  
P.O. Box 159  
Fayetteville, Georgia 30214

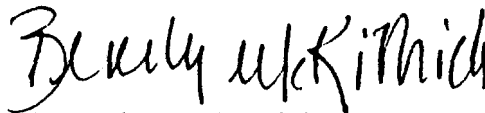
Dear Mr. Fuss:

This is in response to the petition for rule making you filed on behalf of WQAZ Radio proposing the substitution of FM Channel 225C2 for Channel 224A at Cleveland, Mississippi, and modification of the license for Station WQAZ(FM) to specify the higher class channel. In order to accomplish the upgrade at Cleveland, Mississippi you also request the substitution of Channel 292A for Channel 225A at Belzoni, Mississippi.

An initial engineering review shows that Channel 225C2 can be allotted to Cleveland, Mississippi, in compliance with the Commission's minimum distance separation requirements at the current site of Station WQAZ(FM). However, the proposed substitution of Channel 292A at Belzoni is short-spaced to the licensed sites of Station KNAN, Channel 291C, Monroe, Louisiana, and with Station WAID, Channel 292A, Clarksdale, Mississippi. Although there is a proposal to substitute Channel 293C2 for 292A at Clarksdale which, if adopted, will remove the conflict with Belzoni, a final decision has not been made in that proceeding. See 5 FCC Rcd 1344 (1990). You should also be aware that a construction permit has been granted for Channel 225A at Belzoni and that the coordinates for the construction permit were used for our engineering analysis (33-10-34 and 90-33-23).

Therefore, based on the above discussion, your request is not acceptable for rule making at this time and is herewith returned.

Sincerely,



Beverly McKittrick  
Assistant Chief  
Policy and Rules Division  
Mass Media Bureau

Enclosure



COPY

JUL 31 1990

# Contemporary Communications

July 31, 1990

(202) 632-4504

(202) 632-7683 FAX

Mr. Jim Crutchfield  
FM Branch, Mass Media Bureau  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M Street, NW  
Washington, DC 20554

Dear Mr. Crutchfield:

*WJSJ*  
On July 18, 1990, the Commission granted the application of Larry Rogers Scott (File No. BPH-870327KD) for a new FM station on Channel 225A at Belzoni, Mississippi (see Report No. 20908, *Broadcast Actions*, released July 24, 1990). The grant was apparently made without regard for a Petition for Rule Making which was filed on June 17, 1990, requesting the substitution on FM Channel 292A for Channel 225A at Belzoni, in order to accommodate the substitution of FM Channel 225C2 for Channel 224A at Cleveland, Mississippi, filed by Robert G. Johnston, Trustee, licensee of Station WQAZ(FM) at Cleveland, Mississippi.

In accordance with Commission policy, the Belzoni application should have been held in abeyance pending action on the rule making petition, or in the very least, should have been granted with a condition. By granting the application without condition, the Belzoni permittee may begin construction immediately and could conceivably have the station on the air within several months. This would prejudice the Cleveland station's chances for an upgrade, inasmuch as Channel 292A at Belzoni would require a different tower site than that proposed in Scott's construction permit for Channel 225A.

Inasmuch as the rule making petition was filed over a month prior to the grant of the Belzoni application, the rule making petition should have been considered and the Belzoni application should have been held in abeyance or the grant should have been conditioned on the outcome of the rule making proceeding.

If there are any questions, please do not hesitate to call.

Respectfully submitted,

*Larry G. Fuss*  
\_\_\_\_\_  
Larry G. Fuss  
Consultant to Robert G. Johnston (WQAZ)